

# Exhibit A

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF NEW YORK  
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5 IN RE: FISHER-PRICE ROCK 'N )  
PLAY SLEEPER MARKETING, )  
6 SALES PRACTICES, AND ) MDL No. 1:19-md-2903  
PRODUCTS LIABILITY )  
7 LITIGATION )  
 )  
8 \_\_\_\_\_ )  
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11 VIDEOTAPED DEPOSITION VIA VIDEOCONFERENCE OF  
12 COLIN B. WEIR  
13 Tisbury, Massachusetts  
14 Thursday, March 11, 2021  
15  
16  
17  
18  
19  
20

21 Reported by:  
Lynda L. Fenn, CSR, RPR  
22 CSR No. 12566  
JOB No. 4485309  
23  
24  
25

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2 WESTERN DISTRICT OF NEW YORK  
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10

11 VIDEOTAPED DEPOSITION VIA VIDEOCONFERENCE  
12 of COLIN B. WEIR, taken on behalf of  
13 Defendants, Tisbury, Massachusetts, at 11:06  
14 a.m. and ending at 7:24 p.m., Thursday, March  
15 11, 2021, reported by Lynda L. Fenn,  
16 CSR No. 12566, Certified Shorthand Reporter  
17 within and for the State of California,  
18 pursuant to notice.  
19  
20  
21  
22  
23  
24  
25

1 restriction, I would have to give that some thought. 10:30:40

2 There are certainly a few instances, but if you are 10:30:44

3 asking when was I the primary person responsible, it 10:30:47

4 would be dozens at this point. 10:30:52

5 Q In litigation -- let me narrow it a little 10:30:58

6 bit to litigation. 10:31:01

7 In the litigation context how many times 10:31:02

8 have you, yourself, designed a conjoint survey, as 10:31:04

9 opposed to another expert that may have been retained 10:31:08

10 in the action to do that work. 10:31:12

11 A Maybe three or four times. 10:31:14

12 Q In what cases were those three or four 10:31:18

13 times that you designed the conjoint survey? 10:31:21

14 A There was a case involving Craftsman, a 10:31:24

15 case involving New Balance, a case involving -- I 10:31:31

16 think it was maybe Maytag. There's the instant 10:31:40

17 matter. I guess that gets us to four. 10:31:44

18 Well, there was one more. There's a case 10:31:49

19 involving Walmart. 10:31:52

20 There may be one or two others, but that's 10:31:57

21 what's coming to mind as I sit here. 10:31:59

22 Q Are any of those matters listed on your CV? 10:32:03

23 A I know at least some of them will be within 10:32:09

24 the last four years. 10:32:12

25 Q So if you could point me out which of those 10:32:12

1 cases that you just referenced where you were the 10:32:16  
2 person who designed the conjoint analysis survey? 10:32:19  
3 A So page six of the exhibit, Toya Edwards 10:32:23  
4 versus Walmart. 10:32:33  
5 As it happens, the next entry Montgomery 10:32:38  
6 versus Stanley Black & Decker dba Craftsman. 10:32:42  
7 Page eleven, Dashnaw versus New Balance. 10:32:58  
8 Sorry, the prior page, Toby Schechner versus 10:33:15  
9 Whirlpool. 10:33:25  
10 Q Sorry, page ten? 10:33:26  
11 A Yeah. I'm trying to think of the others 10:33:27  
12 that I mentioned to you. I think -- I just gave you 10:33:31  
13 four examples, plus there's the instant matter, so I 10:33:34  
14 think that's it. 10:33:38  
15 Q I'm trying to find the -- on page ten what 10:33:39  
16 is the name of the case? 10:33:41  
17 A It's the third caption from the bottom. 10:33:42  
18 Q Oh, Schechner versus Whirlpool? 10:33:45  
19 A Yes. 10:33:49  
20 Q Any other cases that you can recall as you 10:33:50  
21 sit here today, where you were the one to design the 10:33:56  
22 consult -- conjoint survey? 10:34:02  
23 A Again, there are numerous cases in which I 10:34:06  
24 participated in the design. But if you are going to 10:34:10  
25 say where I was the primary author of the survey, 10:34:12

1 those are the ones that I can think of -- think of as 10:34:13  
2 I sit here right now. 10:34:15  
3 Q Are you will aware in any of those cases 10:34:17  
4 whether a court excluded your testimony based on the 10:34:27  
5 analysis that you did -- the conjoint analysis that 10:34:33  
6 you did? 10:34:36  
7 A I don't think I have an awareness of that 10:34:38  
8 one way or the other. 10:34:41  
9 Q Are you aware whether or not a court in any 10:34:42  
10 of those cases rejected your conjoint analysis and 10:34:44  
11 did not certify the class in those cases -- any of 10:34:49  
12 those cases? 10:34:53  
13 A In the Dashnaw matter, I know that the 10:34:54  
14 parties resolved the case. I don't think there was 10:35:00  
15 ever any judicial commentary on the work. 10:35:03  
16 The Craftsman and Walmart case are still 10:35:07  
17 pending. 10:35:11  
18 And the Schechner case, I know the judge 10:35:12  
19 took issue with the conjoint analysis in that case. 10:35:15  
20 But I don't know the present status of the case. 10:35:17  
21 Q What do you know about the Schechner case, 10:35:20  
22 in terms of what the judge took issue about? 10:35:23  
23 A My primary recollection is that the judge 10:35:26  
24 concluded that I had used arbitrary price points in 10:35:30  
25 the survey rather than actual real world market base 10:35:32

1 price points. 10:35:36

2 Q So, in effect, that you did not incorporate 10:35:37

3 supply side considerations in your analysis? 10:35:51

4 A By virtue of having used arbitrary prices, 10:35:53

5 that would be my recollection of how the judge could 10:35:58

6 characterize the work. 10:36:00

7 Q Okay. So going back -- we'll get to that 10:36:02

8 in a bit. 10:36:05

9 But going back to your work in the last 10:36:06

10 four years, can you describe for me -- you've 10:36:10

11 described for me the situations where you were the 10:36:16

12 person who was primarily responsible for designing 10:36:20

13 the conjoint survey. 10:36:24

14 I want to ask you a broader question. I 10:36:29

15 want to know which of these cases that are on your CV 10:36:32

16 involved work by you that involved conjoint analysis 10:36:35

17 in any degree. 10:36:42

18 So maybe if we can start at the first page 10:36:44

19 of your -- the cases which is page three and just 10:36:47

20 kind of rattle them off for me, if you would? 10:36:50

21 A Sure. So Prescod versus Celsius involved 10:36:53

22 conjoint. The same, Willis versus Colgate. Bechtel 10:36:59

23 versus SOLE Fitness. Bailey versus Rite Aid. 10:37:08

24 Cardenas versus Toyota. Milan versus CLIF. Chamlin 10:37:17

25 versus J&J. 10:37:27

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1 | what you would be testifying to? 11:50:20

2 A You mean on that initial call that we've 11:50:23

3 |       been talking about? 11:50:25

4	Q	Yes.	11:50:26
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5	A	My best memory of that call would have	11:50:27
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6 |     been, hey, Colin, there's a case I would like to talk     11:50:30

7 | to you about with the team. Can we schedule some 11:50:34

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8 | time in the coming week.                                     11:50:36
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9           Something along those lines.                                 11:50:37

10	Q	Did Mr. Fisher advise you have any of	11:50:38
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11 factual assumptions or other assumptions that -- 11:50:43

12	strike that.	11:50:52
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13	Did you learn anything about the case in	11:50:53
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14	that first call?	11:50:55
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15 A I think he would have told me the name of 11:50:56

16 the defendant so that I can could a conflict check 11:51:00

17 and probably provided me with a copy of the complaint 11:51:03

18 to look at so that I could be up-to-speed when we 11:51:06

19	jumped on the first call.	11:51:10
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20 0 And when you had -- when you jumped on a 11:51:11

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21 call with your first call -- when you jumped on your 11:51:14
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22 first call with the team -- I think you called them 11:51:18

23 the team -- were you already engaged by that point or 11:51:20

24 was that before you were engaged? 11:51:25

25 A Again, I don't have the engagement in front 11:51:28



1 of me, but I would assume that I was engaged at that 11:51:31  
2 point. 11:51:35

3 Q So, is it your recollection that you were 11:51:45  
4 effectively engaged after the first conversation you 11:51:47  
5 had with Mr. Fisher to work on the matter? 11:51:50

6 A I would say effectively. I don't remember 11:51:54  
7 the exact timeline. 11:51:56

8 Q Had you worked with Mr. Fisher in the past? 11:52:00

9 A Yes. 11:52:02

10 Q On how many occasions? 11:52:03

11 A Mr. Fisher, maybe ten times. 11:52:05

12 Q What about Mr. Fisher's firm? 11:52:10

13 A More than that. Probably twenty-ish times. 11:52:13

14 Q So, if you look at your schedule of cases 11:52:18  
15 that you gave testimony in the last four years, it 11:52:22  
16 adds up to about 26 times. 11:52:28

17 Does that refresh your recollection as to 11:52:30  
18 how many times you may have been engaged in the 11:52:33  
19 past -- 11:52:38

20 A I apologize, I didn't mean to speak over 11:52:38  
21 you. 11:52:42

22 I think I said twenty-ish times, so I think 11:52:43  
23 that was in the ballpark. 11:52:47

24 Q What was the -- are you currently working 11:52:49  
25 with Mr. Fisher's firm on any other matters? 11:52:51

1 call. 11:58:42

2 Q And you believe that that call occurred 11:58:48

3 within a week or so of the 12-23-2019 time entry? 11:58:50

4 A Which call are we talking about? You keep 11:58:55

5 referring to calls but without sort of identifying 11:58:58

6 what they are. 11:59:01

7 Q Yeah, I apologize. The team call that you 11:59:02

8 just testified to. 11:59:05

9 A That would have been -- well, as billed it 11:59:06

10 would have occurred during the week of 12-23. So I 11:59:09

11 don't remember the precise date, but it would have 11:59:14

12 occurred in that time frame. 11:59:16

13 Q And prior to that call were you given any 11:59:18

14 documents to review? 11:59:21

15 A I can't state with certainty. It's 11:59:22

16 possible that Mr. Fisher would have sent me the 11:59:25

17 complaint, but prior to the engagement I don't think 11:59:27

18 any other case documents would have been shared with 11:59:30

19 me. 11:59:33

20 Q I'm going back to your report and I know 11:59:33

21 that you prepared a lot of different reports. 11:59:50

22 Would it be accurate to say that many of 11:59:54

23 your reports follow the same general format? 11:59:58

24 A We do have a particular style of 12:00:01

25 declaration in terms of the cover page and our logo 12:00:05

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1 Q What is your understanding of plaintiffs' 12:02:55  
2 liability -- excuse me plaintiffs' theory of 12:02:58  
3 liability in this case? 12:03:02

4 A At the highest level -- and I would 12:03:02  
5 certainly let plaintiffs' own papers speak for 12:03:04  
6 themselves, they allege that people bought 12:03:07  
7 Fisher-Price Rock 'N Play sleepers, they paid a 12:03:10  
8 retail price for those and that the products are, in 12:03:17  
9 fact, valueless or basically in the alternative that 12:03:18  
10 they were worth substantially less than the market 12:03:22  
11 value of those products at the time of purchase. 12:03:26

12 Q It's -- in preparing a damages analysis, 12:03:29  
13 it's very important for you, as the expert, to 12:03:33  
14 understand what plaintiffs' theory of liability is. 12:03:35  
15 Would you agree with that? 12:03:39

16 A The level of importance has certainly 12:03:40  
17 changed over time. But I would presently say, yes, 12:03:42  
18 one of the first thing I do is ask a client to 12:03:46  
19 present to me or give me a complaint or something 12:03:49  
20 else that elucidates the theory of liability, so I 12:03:51  
21 can think about that. 12:03:56

22 Q And the theory of liability that you just 12:03:57  
23 articulated, where did you get that information from? 12:04:01

24 A Probably a combination of the complaint and 12:04:05  
25 my discussions with counsel. 12:04:09

1 Q What is your understanding of why the 12:04:16  
2 product is valueless? 12:04:18  
3 A That there is a risk of infant mortality 12:04:20  
4 and other injury from the use of the product. 12:04:23  
5 Q What use of the product creates risk of 12:04:27  
6 mortality according to plaintiffs' theory in the 12:04:38  
7 case? 12:04:42  
8 A If are you talking about what the 12:04:43  
9 plaintiffs allege, I believe that there is no safe 12:04:48  
10 use that they would support for this particular 12:04:50  
11 product. 12:04:53  
12 Q So is it your understanding that 12:04:53  
13 plaintiffs' theory of liability in this case is that 12:04:56  
14 the product is unsafe for all uses? 12:04:58  
15 A Yes. 12:05:00  
16 Q And your understanding of that is based on 12:05:00  
17 your conversations with counsel in reading the 12:05:09  
18 complaint? 12:05:11  
19 A Correct. 12:05:12  
20 Q Have you reviewed any other documents to 12:05:12  
21 articulate your understanding of what you believe 12:05:14  
22 plaintiffs' theory of the case is? 12:05:18  
23 A Not that I recall. 12:05:20  
24 Q You are not here today -- you are not here 12:05:23  
25 today to opine as to whether or not plaintiffs' 12:05:34

1 A Not particularly one way or the other. 13:02:06

2 Q Did you review any of the deposition 13:02:08

3 transcripts of Fisher-Price employees? 13:02:10

4 A Not that I recall. 13:02:14

5 Q Do you know whether any Fisher-Price 13:02:16

6 employees have been deposed? 13:02:20

7 A I think I was aware just from chitchat with 13:02:24

8 counsel that there were 30(b)(6) witnesses being 13:02:30

9 deposed. 13:02:34

10 Q Was any of the substance of the -- of any 13:02:34

11 of the depositions ever disclosed -- strike that. 13:02:38

12 Was any of the substance of any of the 13:02:40

13 testimony of any of the Fisher-Price witnesses ever 13:02:43

14 disclosed to you? 13:02:44

15 A I think I heard that what I had assumed 13:02:45

16 about some underlying data from Fisher-Price and the 13:02:52

17 sales of the products that my understanding of it was 13:02:54

18 confirmed by one of those witnesses. 13:02:57

19 Q Can you elaborate on that? What data are 13:03:01

20 you referring to? 13:03:03

21 A I don't remember the precise Bates number, 13:03:05

22 but one of the Fisher-Price documents has a pretty 13:03:08

23 detailed outline of the ongoing sales of the 13:03:11

24 products. And again, I had a pretty good feeling 13:03:16

25 about what it was that the 30(b)(6) witness to the 13:03:19

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1 best of my recollection had confirmed my 13:03:24  
2 understanding of the data. 13:03:26

3 Q And in terms of the ongoing sales of the 13:03:26  
4 product what are you referring to? 13:03:30

5 A Sales by time and by SKU of the challenged 13:03:31  
6 products. 13:03:36

7 Q Other than the sales information which you 13:03:39  
8 just testified to, were you provided any information 13:03:42  
9 regarding any testimony given by any Fisher-Price 13:03:48  
10 employee? 13:03:52

11 A Would you ask the question again, please, I 13:03:52  
12 just missed part of it? 13:03:54

13 Q Sure. 13:03:57

14 Other than the sales information which you 13:03:58  
15 just testified, were you given any information 13:04:00  
16 regarding the substance of any testimony given by any 13:04:02  
17 Fisher-Price employee? 13:04:06

18 A Not to the best of my recollection. 13:04:06

19 Q Prior to preparing your report, have you 13:04:08  
20 reviewed any consumer reviews on the product? 13:04:17

21 A Again, not to the best of my recollection. 13:04:21

22 Q Prior to preparing your report, did you 13:04:25  
23 review any blog posts regarding the product? 13:04:27

24 A I don't think so, no. 13:04:32

25 Q Is there any other material you think would 13:04:33

1 have been helpful for you in preparing the report 13:04:36  
2 that you did not receive? 13:04:40  
3 A I guess I don't know what's out there but I 13:04:41  
4 was very comfortable making the opinions that I have 13:04:48  
5 made and set forth in the report based upon the 13:04:51  
6 present record. Obviously, as I stated in the report 13:04:54  
7 if there any new or additional information comes to 13:04:56  
8 light I will happily consider it. 13:05:00  
9 Q Did you review plaintiff's motion for class 13:05:03  
10 certification prior to it being filed? 13:05:06  
11 A I don't think so, no. 13:05:08  
12 Q Have you read it before today? 13:05:09  
13 A I'm not even sure I've read it today. 13:05:12  
14 Well, I know I haven't read it today. I'm not even 13:05:14  
15 sure I have read it as of today. 13:05:19  
16 Q Yeah, that actually was my question. Sorry 13:05:20  
17 if it faded out. But my question was initially prior 13:05:23  
18 to the filing of plaintiff's motion for class 13:05:26  
19 certification did you review it? 13:05:32  
20 A Again that one I answered. I don't believe 13:05:34  
21 so, no. 13:05:36  
22 Q And as of today have you reviewed 13:05:36  
23 plaintiff's motion for class certification? 13:05:39  
24 A Not to my recollection. 13:05:42  
25 Q Were you provided any assumptions by 13:05:44

1 BY MR. KANNY:

2 Q We'll get more into that in a second. 13:17:02

3 Would you agree that the full refund theory 13:17:04  
4 is only appropriate if the product has no value to 13:17:06  
5 all of the class members? 13:17:09

6 A I'm not sure I would phrase it that way. 13:17:13  
7 First of all, I would say one incidence in which I 13:17:16  
8 understand that the full refund method would be 13:17:19  
9 appropriate would be when that product has no market 13:17:24  
10 value. So again, I'm not looking at the subjective 13:17:27  
11 feelings of class members but rather at the objective 13:17:30  
12 market value of the product. 13:17:34

13 I believe -- I'm not a lawyer but I have 13:17:35  
14 been told that there are other circumstances where 13:17:38  
15 the law could present the opportunity for a full 13:17:40  
16 refund, but again, I'm not looking at any individual 13:17:45  
17 consumer's subjective feelings about the product. 13:17:48

18 Q Please define the objective market value as 13:17:51  
19 you just stated. 13:17:57

20 A That's typically equated with the market 13:17:57  
21 price. 13:18:02

22 Q And what is the market price based upon? 13:18:02

23 A It depends on the product. It depends on 13:18:06  
24 the market. 13:18:10

25 Q Would you agree that a market price is the 13:18:10



1 intersection between the demand curve and the supply 13:18:16  
2 curve? 13:18:23

3 A It's generally not. There are only the 13:18:23  
4 rarest of circumstances where the price is pushed to 13:18:26  
5 that "X" marks the spot interaction of supply and 13:18:29  
6 demand. 13:18:32

7 Q When -- in what circumstances is it pushed 13:18:35  
8 to that point? 13:18:38

9 A I'm aware only of the circumstance of 13:18:39  
10 perfect competition, which exists only in economic 13:18:43  
11 textbooks and to my knowledge never in the real 13:18:48  
12 world. 13:18:53

13 Q Have you seen any evidence to support the 13:19:00  
14 conclusion that the Rock 'N Play sleeper was 13:19:03  
15 valueless to all class members ? 13:19:12

16 A Again, I haven't been asked to make a 13:19:14  
17 determination about whether there was or was not 13:19:16  
18 market value. So when I say I haven't seen evidence 13:19:19  
19 about that it's not there there's an absence of 13:19:22  
20 evidence per se, just that I haven't sought out such 13:19:26  
21 evidence because it was beyond the scope of my 13:19:29  
22 report. 13:19:32

23 Q Can you look at paragraph nine for me, the 13:19:32  
24 first sentence. And for record, I'll read it. 13:19:36  
25 This is of your report and it says, 13:19:38

1 could never be eliminated -- eliminated? 13:27:53

2 MR. FISHER: Object to form. 13:27:59

3 THE WITNESS: Again, it's my understanding 13:28:02

4 that plaintiff's allege that the risks are inherent 13:28:04

5 in the product. I don't know whether they are saying 13:28:08

6 that you could ameliorate those risks, for example, 13:28:11

7 by rebuilding or reconstructing the Rock 'N Play. 13:28:15

8 BY MR. KANNY: 13:28:18

9 Q Are you planning on doing any analysis to 13:28:23

10 determine if the Rock 'N Play is valueless to all 13:28:27

11 class members? 13:28:32

12 A I have not been asked to assist in that 13:28:34

13 task. If I was asked to do it I would at least 13:28:37

14 consider taking the assignment but at this point I 13:28:40

15 have no plans to do that type of analysis, the sort 13:28:45

16 of liability work if you were. 13:28:48

17 Q Do you know whether any of the babies of 13:28:50

18 the class -- putative class members have actually 13:28:53

19 been injured in using the Rock 'N Play sleeper? 13:28:57

20 A I know that injury and death has certainly 13:29:00

21 been tied to use of the Rock 'N Play. Whether any of 13:29:08

22 them are named plaintiffs, I don't know. I think by 13:29:11

23 virtue of the class definition at least some of them 13:29:14

24 would be part of the class. 13:29:18

25 Q Under your full refund theory if a consumer 13:29:20

1 of a Rock 'N Play sleeper sold at Walmart is 13:51:51  
2 comparable to the price of a Rock 'N Play sleeper at 13:51:54  
3 Best -- buybuy BABY, are you? 13:51:58

4 A It would depend. They may be comparable, 13:51:59  
5 they may not be. But since we're looking in the 13:52:03  
6 aggregate we can make that estimation that will allow 13:52:06  
7 for the differences in retailers to exist. 13:52:09

8 Q So if buybuy BABY was selling a Rock 'N 13:52:11  
9 Play sleeper for \$150 and Walmart was selling a Rock 13:52:17  
10 'N Play sleeper for \$29 your methodology would be a 13:52:23  
11 simple average of the two? 13:52:27

12 A My methodology would be to try and 13:52:29  
13 determine the total amount that consumers spend on 13:52:33  
14 the products, which would reflect the price that was 13:52:37  
15 paid at buybuy BABY and the price that was paid at 13:52:39  
16 Walmart. 13:52:44

17 Q And well under your full refund theory what 13:52:44  
18 would the putative class member be entitled to? 13:52:49

19 A I can't speak to what any one person would 13:52:51  
20 be entitled to. What I can say is that under the  
21 full refund method the total amount spent at retail 13:52:55  
22 subject to the class definition would be what would 13:52:55  
23 be the aggregate class-wide damages. 13:52:57

24 Q Right. But as you sit here today, you have 13:53:01  
25 no methodology in mind for how one would compensate 13:53:04

1 individual putative class members? 13:53:11

2 A Because the individual compensation of 13:53:13

3 putative class members doesn't impact the aggregate 13:53:16

4 calculation of harm caused by the defendant and 13:53:20

5 because I haven't been asked to figure out a claims 13:53:22

6 administration regime I have not laid forth such a 13:53:25

7 method. 13:53:29

8 Q Okay. So if I look in your report I 13:53:29

9 wouldn't find any methodology? 13:53:32

10 A Same answer. 13:53:38

11 Q Does your -- for the full refund theory 13:53:39

12 does your methodology take into account past refunds? 13:53:51

13 A I'm sorry, say that one more time, please. 13:53:58

14 Q Sure. 13:54:00

15 Does your full refund calculation take into 13:54:01

16 account past refund calculation taking into account 13:54:08

17 past refunds?

18 A Yes, we would be looking to determine the 13:54:11

19 aggregate net sales to the class. 13:54:12

20 Q And in the data that you have do you have 13:54:13

21 the information that would allow you to take out from 13:54:15

22 that past refunds? 13:54:18

23 A I believe I do have net sales statistics. 13:54:20

24 Q What about discounts provided on the 13:54:26

25 purchase of the products? 13:54:37

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1 consumers. 15:28:11

2 Q When will you make a decision as to which 15:28:11

3 attributes you will, in fact, use? 15:28:27

4 A Barring further evidence these are the 15:28:28

5 attributes that will be used. I do describe that 15:28:31

6 there is a process by which the survey vetted through 15:28:34

7 cognitive interviews and exploratory research. And I 15:28:38

8 understand that discovery in this case has been 15:28:41

9 bifurcated and is ongoing. 15:28:45

10 So I would always suggest to the court that

11 I want to get this right and if information comes to

12 light that would suggest a change in the survey, I

13 would do that but if the judge said this all looks 15:28:52

14 good, let's go tomorrow I would use these attributes. 15:28:55

15 Q Have you done any pre -- have you done any 15:28:59

16 exploratory research today? 15:29:04

17 A No, I have not but as I have said in the 15:29:08

18 appendix I would guaranty that that would be part of 15:29:12

19 my process of taking this survey to the field. 15:29:15

20 Q And so as you said while you would use 15:29:17

21 these attributes those are based on what you know now 15:29:21

22 and not what you've done in connection with 15:29:24

23 exploratory research that as I think you say here, 15:29:29

24 would inform you as to what product attributes to 15:29:32

25 include in the survey; correct? 15:29:35

1           A    When I have experience of doing careful           15:29:38  
2   conjoint design whether by myself or with other folk,   15:29:42  
3   it is often the case that a carefully designed           15:29:47  
4   conjoint as I have set forth here will experience few   15:29:50  
5   or no changes as a result of the exploratory research   15:29:54  
6   that confirms the careful research that was done           15:29:56  
7   before.   15:30:00

8                   But if there is something that sticks out   15:30:01  
9   from the exploratory research that would suggest that   15:30:02  
10   it be prudent to make a change then I would, of           15:30:05  
11   course. Follow that prudence.                               15:30:09

12           Q    You do say though in paragraph 16 that as a   15:30:10  
13   result of these interviews, quote, "I would gain a       15:30:14  
14   better understanding of the drivers of consumer           15:30:17  
15   choices"; correct?   15:30:20

16           A    I guess it would be more accurate to say   15:30:21  
17   that either I would learn something or my prior           15:30:23  
18   knowledge would be confirmed.                               15:30:26

19           Q    Just curious, have you in the course of   15:30:28  
20   your work to date spoken with any user of the Rock 'N   15:30:42  
21   Play sleeper?   15:30:46

22           A    Not knowingly and/or not about the Rock 'N   15:30:46  
23   Play.   15:30:48

24           Q    Have you spoken with any of the plaintiffs   15:30:48  
25   in this case?   15:30:51

1	A	Again, not knowingly.	15:30:51
2	Q	Have you spoken with -- strike that.	15:30:55
3		Do you have kids?	15:31:04
4	A	Yes.	15:31:04
5	Q	How old are your kid?	15:31:05
6	A	I have one son who's almost five.	15:31:07
7	Q	Are you a user of a Rock 'N Play sleeper?	15:31:10
8	A	No, never have been.	15:31:13
9	Q	Excuse me, that would be hard for you to be	15:31:15
10		a user of it.	15:31:19
11		Was your son ever -- did you ever purchase	15:31:20
12		or use a Rock 'N Play sleeper for your son?	15:31:22
13	A	No.	15:31:24
14	Q	Did you have any knowledge of -- of the	15:31:25
15		Rock 'N Play Rock 'N Play sleeper product prior to	15:31:31
16		this case?	15:31:34
17	A	I don't believe so, no.	15:31:34
18	Q	Have you talked to your wife about the Rock	15:31:35
19		'N Play sleeper?	15:31:41
20	A	Only at the highest level when I described	15:31:41
21		what the case was about when she asked what I was	15:31:45
22		being deposed about last night.	15:31:49
23	Q	And has she ever heard of the Rock 'N Play	15:31:51
24		sleeper product?	15:31:56
25	A	I didn't ask but she didn't indicate that	15:31:56

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1 the bottom, which is again standard procedure in 15:51:49  
2 conjoint. 15:51:52

3 Q And you'd agree with me wouldn't you that 15:51:52  
4 the safety warning here that you're using should be 15:51:54  
5 consistent with the plaintiff's theory of liability; 15:51:57  
6 correct? 15:51:57

7 A I agree that it should be and based on my 15:52:03  
8 discussions with plaintiffs it would be but again I 15:52:05  
9 would assure the court that if they believe there's 15:52:09  
10 alternate language that would be more appropriate to 15:52:12  
11 test that I can make a change to the design before 15:52:16  
12 the survey is fielded. 15:52:18

13 Q Are you aware of any other products used 15:52:19  
14 for infant sleep -- well, strike that. 15:52:22

15 Does your full refund theory assume that 15:52:49  
16 purchasers of the Rock 'N Play sleeper had no 15:52:54  
17 awareness of any alleged safety issues relating to 15:52:59  
18 the product at the time they purchased it? 15:53:05

19 A I'm not making an assumption about that one 15:53:07  
20 way or the other. 15:53:12

21 Q Is that important for your analysis under 15:53:13  
22 the full damages model? 15:53:16

23 A Not based on plaintiff's stated theory of 15:53:19  
24 liability. 15:53:21

25 Q Do you know what the actual warning label 15:53:21





ECONOMICS AND TECHNOLOGY, INC.

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April 8, 2021

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*In re: Fisher Price Rock 'N Play Sleeper Marketing; March 11, 2021 Deposition of Colin B. Weir*

Ms. Fenn:

Attached, please find the errata sheet to my March 11, 2021 deposition transcript.

Kind regards,

Colin B. Weir

April 8, 2021

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Cite	Original	Errata	Reason Code
8:25	meet	make	1
12:2	loss	lost	1
12:10	, two	II	1
13:6	tries	trials	1
13:9	, one	I	1
13:10	two	II	1
13:13	two	II	1
13:24	one	I	1
31:7	guaranty	guarantee	1
34:21	suit	suite	1
39:4	1999	2009	1
42:15-16	schoolwork that's involved in	school worth its salt is	1
48:4	advance	advanced	1
48:13	If the	The	1
50:9	when	what	1
50:15	ads	paths	1
51:11	at levels	and levels	1
52:12	design	designed	1
52:21	base	Bayes	1
53:7	phrase	phase	1
56:19	advance classes	advanced class	1
59:7	taking break	taking a break	1
63:1	aught	aughts	1
72:23	aught	aughts	1
73:2	here, "As of 3-9-2021, for	here as of 3-9-2021, "For	1
78:11-12	are you	you are	1
84:18	guess	guessed	1
85:6	Yes	No	1
91:25	base	based	1
94:22	once	ones	1
100:7	John	Jon	1
100:12	McMarrow	McMorrow	1
102:20	did	do	1
103:4	Betty	Betsy	1
104:6	Byron	Behrend	1
114:11	affixed	a fixed	1
114: 12	base	based	1
114:14	arbitrarily	arbitrary	1
116:2	primary	primarily	1
118:11	that used	that was used	1

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121:19	17	13	1
130:16	could a	could run a	1
146:4	generalizations	generalization	1
147:17	refer	defer	1
156:14	can'	can't	1
159:14	20201	2021	1
164:3	I'll	I'm	1
165:14	challenge	challenged	1
168:23	"What	"When	1
171:25	report in	report and	1
173:5	in	and	1
175:6	that their primarily	that as their primary	1
179:25	that	but	1
181:7	there any	there is any	1
189:2	their	there are	1
194:11	first	for	1
194:21	"haven't	"shoudn't have	1
194:22	be	lead	1
198:3	sold in	sold, were in	1
202:8	expanse	extant	1
206:18	faceted	facile	1
217:5	as memory-wise	as a memory quiz	1
218:13	spend	spent	1
221:24	class by	class-wide	1
224:13	Eubanks	Eubank	1
224:17	340	349	1
230:19	speak or	speak for	1
233:3	ongoing	conjoint	1
241:2	marketplace I	market price I	1
242:8	withdraws	draws	1
242:9	work to	worth	1
245:5	are on conjoint analysis	run conjoint analyses	1
245:5	having	have	1
246:9	bases	basis	1
257:7	continued	contingent	1
260:6	was	would	1
261:15	Byron	Behrend	1
268:1	conduct	conduct would	1
272:15	inti	into	1
275:6	survey vetted	survey is vetted	1
275:18	guaranty	guarantee	1
295:3	know see	see	1

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298:20	conjoin	conjoint	1
298:22	review that a	view that as	1
303:5	CDW	CBW	1

1= Transcription error, 2=Clarification, 3=Conform to Facts